2001

John Leach v. Norma B. Anderson and Valley Bank and Trust Company : Brief of Appellant

Utah Supreme Court

James W. Beless; Wallace D. Hurd; Attorneys for Respondent.
Parker M. Nielson; Irving H. Biele; Biele, Haslam and Hatch; Attorneys for Appellants.

JOHN LEACH,
Plaintiff and Respondent,

-vs-

NORMA B. ANDERSON and VALLEY BANK AND TRUST COMPANY,
Defendants and Appellants.

Case No. 13808

APPELLANTS' BRIEF

Appeal from a Judgment of the
Third District Court of Salt Lake County,
Honorable James S. Sawaya, Judge

PARKER M NIELSON, ESQ.
318 Kearns Building
Salt Lake City, Utah 84101
Attorney for Appellant,
Norma B. Anderson

IRVING H. BIELE, ESQ.
BIELE, HASLAM & HATCH
80 West Broadway, Suite #300
Salt Lake City, Utah 84101
Attorney for Appellant,
Valley Bank and Trust Company

JAMES W. BELESS, ESQ. and
WALLACE D. HURD, ESQ.
1011 Walker Bank Building
Salt Lake City, Utah 84111
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

AUTHORITIES CITED

CASES

TEXTS

TABLE OF CONTENTS—Continued

Page

STATUTES

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

JOHN LEACH,
Plaintiff and Respondent,

-vs-

NORMA B. ANDERSON and VALLEY BANK AND TRUST COMPANY,
Defendants and Appellants.

Case No. 13808

APPELLANTS' BRIEF

STATEMENT OF THE NATURE OF THE CASE

This action was brought by the respondent-creditor against appellant-debtor and appellant-trustee seeking to invalidate a trust agreement to satisfy a judgment.

DISPOSITION IN LOWER COURT

Although the lower court found that no fraud was

involved. It invalidated the trust agreement based on a Utah statute and gave a judgment against appellants.

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the judgment entered in lower court.

STATEMENT OF FACTS

This case arises out of the efforts of the plaintiff to collect on a judgment against the defendant, Norma Anderson, from assets which were placed in trust with defendant, Valley Bank and Trust Company. The trust was created prior to the date of judgment and prior to the transaction on which the judgment is based. Plaintiff asserts that the trust is void under Utah statutes prohibiting conveyance of personal property in trust to defeat the claims of creditors.

The facts center upon the execution of a promissory note, which is Exhibit 1-P [R-140], by the Angi Corporation and payable to the plaintiff. The note was signed by David B. Anderson, who is the son of defendant, Norma B. Anderson. Norma B. Anderson also signed as guarantor. Angi Corporation defaulted and the plaintiff obtained judgment against Norma B. Anderson.

The promissory note was dated April 15, 1969. Five months prior to that date, on November 12, 1968, Norma B. Anderson created a trust with defendant, Valley Bank and Trust Company. Mrs. Anderson's purposes in creating the trust were twofold:

1. Mrs. Anderson is unable to resist the demands of her son, who had a drinking problem, and who caused her to invest in his improvident business ventures [R-158 and Findings of Fact No. 2].

2. Mrs. Anderson desired to protect her other children and her estate and required professional management because of her improvidence and inexperience.

The Bank officer who counselled her in the preparation of the trust and in many meetings prior thereto corroborated these reasons [R-180-85 et seq].

Plaintiff was unable to satisfy his judgment against Norma B. Anderson's personal assets and he brought this action to recover against the assets of the trust.

The complaint is in two causes of action. The first cause of action was based on the theory that defendant, Norma B. Anderson, defrauded the plaintiff in relation to the presentation of the July 1968 financial statement. Count I was dismissed by the court at the time of trial as being without support in the evidence. The court found that Mrs. Anderson had not given the financial statement to the plaintiff and that it was taken from her files without her knowledge. The promissory note was dated April 15, 1969, approximately one year after the date of the financial statement [July, 1968] and the plaintiff made no effort to verify the facts contained in the statement to determine the accuracy thereof or to run any credit checks of any kind [R-148-151].

Count II is based upon the theory that the trust is void as to the plaintiff under Section 25-1-11, Utah Code Annotated, which declares void trusts of personal property for the use of the trustor.

Rex Guymon, trust officer of the defendant Valley Bank and Trust Company testified concerning the trust, its assets, and payments from the trust. Mr. Guymon identified certain payments which had been made to Norma B. Anderson averaging $928.54 per year [R-1F6]. Mr. Guymon established that the payments referred to were insignificant in proportion to the trust assets and that on occassions Mrs. Anderson had requested other payments which had been refused [R-182]. The only payment of any consequence -- the $5,000 paid to protect her interest in the Chuck Wagon property -- was in reality a payment made to conserve the trust assets since the Chuck Wagon stock was also conveyed to and became a part of the trust estate [R-1F6].

ARGUMENT

POINT I

THE STATUTE DOES NOT VOID TRUSTS IN WHICH THE TRUSTOR IS MERELY AN INCIDENTAL BENEFICIARY

Resolution of the plaintiff's claim requires careful application of *all* of the terms employed by the statute. The plaintiff cannot select those words which suit his

purpose and ignore other words which would preclude his claim. Plainly the statute must be construed in such a way that each word is given its intended meaning, and if that meaning is applied plaintiff's claim must fail.

A. *The statute applies only to trusts of personal property.*

By its own terms the statute applies only to "goods, chattels, or things in action made in trust." An examination of the trust instrument, which is in evidence, and the financial statement which the plaintiff claims misled him, will reveal that, in the main, this trust is composed of real property as to which the statute has no application whatsoever. The Utah Supreme Court has so held in *Geary v. Caine,* 71 Utah 268, 9 P. 2d 396, wherein the court stated:

> "She says that the conveyance. . . in which he conveyed all of his property in this state to the corporation, . . . without consideration, comes squarely within the provisions of said section. But such position cannot be maintained. Section 5816 relates only to transfers of personal property, not real property, and hence has no application to the conveyance of the real estate here involved. It relates only to 'goods, chattels, or things in action', which in any sense of the terms are not real property."

The financial statement [Exhibit 2] clearly shows that almost all of the assets of any real or substantial nature that were transferred to this trust are real estate

or interests in real estate. Therefore, in order to sustain the District Court's decision, this Court will have to directly overrule the case law in the State of Utah, which represents the majority opinion in the United States.

B. *The purposes of Norma B. Anderson's trust are not within the statute.*

Even if the trust assets were of the type contemplated by the statute, the statute declares that its provisions apply only to trusts "for the use of the person making the same." The meaning of that phrase has never been defined by the Utah Supreme Court and in that sense this case is one of first impression. This Court must therefore look to the general law on the subject and the purposes of the statute itself.

As already noted, the statute is directed to the conveyances of personal property in such a way as to shield them from "existing or subsequent creditors of such person." It is, in simple terms, a statute directed at conveyances to defraud one's creditors. There is no evidence in this case that Mrs. Anderson had any such purpose in mind or, that, viewed from the time of its creation this trust would defraud creditors. In fact, the only testimony on the subject is Norma Anderson's statement that at the time of the conveyance she desired to protect herself from her son's improvidence, protect the interests of her other children and obtain good management of the assets. Mrs. Anderson further testified that she had retained in her own possession

ample assets which she believed would satisfy all of her known creditors as her claims matured:

> "Q. Would you explain for the Court the resons why you caused that trust instrument to be prepared and executed?
>
> A. Well, I didn't seem to be able to refuse my son and he was wanting to open up so many Chuck Wagons and I really didn't want to get involved in them and I told him so but he just kept after me and kept after me to get money for this and money for that, to get into more and more Chuck Wagons and so, of course, my attorney wanted me to set up a trust so that I could refuse him so that, you know, I wouldn't - I couldn't go ahead and hand the money over to him which I was doing so that I could protect me and my children." [R-158]

The testimony of Rex Guymon, the bank officer, corroborated Mrs. Anderson's testimony and these facts were never disputed:

> "Q. (By Mr. Biele) Thank you. Would you please state what she stated to you?
>
> A. She said that her husband was killed in an accident in 1967 and that she had considerable problems as far as managing her affairs and needed administrative help from the bank and indicated that one of the main reasons that she wanted to set the trust up is to protect herself against an alcoholic son that was -- that was continually asking her for money and she

could not refuse those requests and so the trust consequently was set up under the advice of her attorney after --

Q. Were there any statements made to equalization of inheritance?

A. Yes. That was another reason why the trust was set up is because she had other children and other heirs to her estate and the way it was going her son, David, was receiving a share that was not -- would not be equal to the others and by putting it in an irrevocable trust this would insure her that the other children would get their proportionate share." [R. IF-4-5]

The true purpose of this trust, as is evident by its provisions [R-8F-98] (which are their own best evidence), is to conserve Mrs. Anderson's estate for the benefit of her children and grandchildren. This is evident from a reading of clauses IV and V of the trust, which contain three pages of detailed directions concerning the distribution of trust assets to Mrs. Anderson's heirs. There are also provisions for the maintenance of Mrs. Anderson during her life, but these are common provisions in such an estate planning instrument and could not be held to render the trust one "for the use" of Mrs. Anderson, within the meaning of the statute.

C. *As a matter of law the statute does not apply.*

What is more fundamental, however, is that the purpose of this trust was not "for the use" of the trustor within the meaning of that term in law.

To adopt the plaintiff's construction of the statute would mean that the settlor of a trust could never have any beneficial interest, even as an incidental beneficiary, or the entire trust instrument would fail. Not only is that an unfair and unreasonable construction of a statute, the obvious purpose of which is to prevent fraud of creditors, but neither is the construction that has been placed on similar statutes in other jurisdictions.

Thus ***Restatement of Trusts,*** 2d § 114 declares that the purpose of such statutes is to invalidate trusts which are for the *sole* benefit of the trustor:

> "§114. The Settlor as Beneficiary
>
> The Settlor of a trust may be one of the beneficiaries or the sole beneficiary of the trust
>
> . . .
>
> Illustrations
>
> 1. Statutes. In some states there are statutes which provide that a transfer in trust for the benefit of the settlor is void. *Such statutes are interpreted as sole benefit of the Settlor."* (Emphasis added.)

Such a construction is a sound one. Under any other construction the careless slip of a draftsman's pen (in which even a hypothetical interest of the settlor was retained) would have the effect of invalidating the entire trust. If this court were to adopt such a harsh reading of the statute it would, in truth, invalidate the

entire law of trusts. The extensive provisions of Utah law relating to the creation and interpretation of trusts, to which citations are necessary, attest that no such intention may be ascribed to the legislature.

POINT II

EVEN IF THE COURT WERE TO DETERMINE THAT APPELLANT'S TRUST IS SUSCEPTIBLE TO THE CLAIMS, THE RESPONDENT CAN ONLY REACH THAT AMOUNT THAT THE TRUSTEE UNDER THE TERMS OF THE TRUST COULD PAY TO THE APPELLANT OR APPLY FOR HER BENEFIT.

While the meaning and construction to be given the statement in UCA 25-1-11 are not entirely clear, the *underlying* policy is evident. Generally speaking, it is against public policy to allow a person to create for his own benefit an interest in property that cannot be reached by his creditors. On the other hand, it is equally evident that public policy would not permit one's creditors to reach property in which the debtor has no beneficial interest and is unable to use and enjoy.

Restatements of Trust 2d §156 states the general rule:

"§156. Where the Settlor is a Beneficiary.

(2) Where a person creates for his own

> benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit."

The Anderson trust is a combination support and discretionary trust. Under the terms of the trust, the trustee "shall pay to or for the benefit of the grantor such portions of the income and principal of this trust as may be necessary to maintain the grantor in a reasonable standard of living after taking into consideration other income received by Grantor". It is within the trustee's discretion to make payments "as may be necessary". The Trustee's discretion is not absolute, however, Paragraph II of the trust agreement goes on to provide a guideline for the trustee in determining what is a reasonable standard of living. "In determining the standard of living to be maintained, the trustee shall use as a rule of guide the standard of living of the grantor of the date of the execution of this agreement. . ."

Applying the rule of §156(2) of the Restatement the maximum trust assets respondent would be able to reach would be the difference between the grantor's income from other sources and the amount necessary to maintain a standard of living comparable to that which she enjoyed in November of 1968. Pursuant to the statute, Respondent would only be able to reach "goods, chattels, or things in action," in order to satisfy his claim.

Case law reinforces this portion. *DiMaria v. Bank*

of California National Association, 23 Cal. App. 2d 254, 46 Cal. Rptr. 924 (1965) involved a situation similar to the instant case. In each case a widow with grown children has executed an irrevocable trust agreement transferring most of her assets to a bank. In each case the purpose of the trust was to free the trustor from the constant demands of her children. Each trust provided for certain distribution of the income to the trustor during her lifetime and the remainder to be distributed on her death to her children. Each provided that the trustee could apply for the trustor's benefit so much of the principal as the trustee deemed advisable if the income from other sources, should be insufficient to provide for the trustor's reasonable support. In the *DiMaria* case, the trustee's discretion is absolute, while as has been seen in the Anderson trust, the trustee's discretion is limited by certain guidelines.

In a creditors suit to declare that the corpus of the trust was subject to his claim, the court held the trustee was justified in refusing to pay the creditor's claim from the corpus of the trust in the absence of a showing under the terms of the trust agreement that the settlor's income from the trust and other sources was not sufficient for her reasonable support to authorize the exercise of trustee's discretion in invading the corpus for the settlor's benefit.

The court reasoned that to permit recovery from the corpus without showing an inadequacy of the trustor's income from other sources for her support would give

the creditor access to trust assets not reachable by the beneficiary nor payable to her within the sound discretion of the trustor. At 926:

> "The general rule is that the creditor of a beneficiary under a trust has no more rights and can secure no greater benefits from a trust than the beneficiary himself."

The *DiMaria* court distinguished *Ware v. Gulda,* 331 Mars 68, 117 NE 2d 137 (1954), and *Greenwich Trust Co. v. Tyson,* 129 Conn. 211; 27A 2d 166 (1942); on the grounds that they dealt with discretionary trusts in which the income and/or principal was payable to the settlor/beneficiary subject only to the *absolute discretion* of the trustee. The court pointed out that the trustee's discretion over the payment of corpus is limited rather than absoulte. "The corpus can be invaded only if the income therefrom, together with Mrs. Walton's income from other sources, is insufficient to provide *reasonable* support, medical care and comfort. The discretion granted the trustee would clearly be abused by any arbitrary withdrawal not justified under this proscription." At 926.

This holding should be applied to the facts of this case. If the Anderson trust is found to be subject to the respondent claims, the respondent may not receive greater benefits than Mrs. Anderson herself. Therefore, the Respondent would only be able to reach the amount of personal property equal to that amount necessary to maintain the standard of living which she was ac-

customed to in November 1968 minus the income Mrs. Anderson receives from outside sources. It is up to the court to ascertain the amount of trust assets subject to the respondents claim. *Scott on Trusts* §156. 1 p. 1197.

The Respondent may argue that the *DiMaria* case is distinguishable from the present case in that the Walton trust did not contain a spendthrift provision and California has not enacted a statute comparable to UCA 25-1-11. The fact that the Anderson trust contains a spendthrift provision should not affect an application of the holding in *Dimaria* to the facts of this case. Even if the spendthrift clause is held to be illegal as against the creditors of Mrs. Anderson, it has been held that this does not affect the validity of the other provisions of the trust. *Liberty National Bank v. Hicks;* 173 F2d 631 (1948), 9ACR 2d 1335.

The fact that there was no California statute similar to the Utah statute is not *fatal to this case.* UCA 25-1-11 deals with trusts "for the use of the maker." If it is held that this statute is applicable to the trust in question it may only be so as to the portions of the trust that are "for the use of the maker". Any other reading of the statute would serve to give the creditors of Mrs. Anderson greater rights and benefits in the trust property than she has for herself. This is contrary to the public policy underlying these statutes, *Scott on Trust,* §156 p. 1192-93.

This is especially so considering that the domi-

nating purpose behind the Anderson trust was not to avoid Mrs. Anderson's just obligations but rather to free herself from the constant demands of her son, David, and guarantee her other children a fair share of the estate she and her husband had developed over the years.

Since the Court has personal jurisdiction of Mrs. Anderson, it could order her, under pain of contempt and possible imprisonment, to pay any sums paid to her by the trustee to the creditor, and the court need not upset or modify the provisions of the trust agreement or change the law of many years standing.

POINT III

SINCE THE GIFT WAS ABSOLUTE AND THE TRUST IRREVOCABLE, IT VESTED INTERESTS IN CHILDREN AND GRANDCHILDREN AND THE SUSTAINING OF THE DISTRICT COURT WOULD DIVEST THESE PARTIES OF A VALUABLE RIGHT WITHOUT HEARING.

Under the terms of the trust the proceeds are to be distributed to the children, grandchildren and great-grandchildren of Mrs. Anderson in accordance with fixed and described formulas. The trust was irrevocable. Mrs. Anderson retained no right to invade the trust principal.

The trust creates a "grandchildren's trust" which

is for the benefit of "all of the grandchildren of the grantor, including such grandchildren as may be born after the date of the establishment of the trust and until final distribution of the trust portion" which occurs ten (10) years after the last grandchild living at the date of the establishment of the trust has attained the age of twenty-two (22) years.

The grandchildren's trust provides for payments for health, hospital, medical, dental expenses, for religious education, college or technical education. These interests are vested! The parties owning said interests are not represented in this case. Is it the policy of the court to take from yet unborn children or from parties not represented before the court their vested interests?

Since this trust is for the benefit of many persons other than Mrs. Anderson and would continue for many years, it is obvious that the spendthrift provisions of the trust, as they apply to children and to grandchildren, are perfectly enforceable and realistic.

On the other hand, if any amount or benefit, as a matter of right is payable to Mrs. Anderson, then such amount, when payable, could be subject to the claims of a creditor of Mrs. Anderson as the law prohibits enforcement of a spendthrift provision in relation to the person creating the trust. In this case, Mrs. Anderson had no right to demand any funds. The method and amount of payment is completely discretionary with the trustee who can pay the same for her benefit or to her as it, in its sole discretion, determines.

POINT IV

THE PLAINTIFF'S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

This trust was created on November 12, 1968. The promissory note that gave rise to the action in this case was dated April 15, 1969. The plaintiff's action to set aside the trust was filed March 27, 1972, which is more than three (3) years after the date of the creation of the trust.

The applicable statute of limitations is 78-12-26:

> "(4) An action for a liability created by the statutes of this state, other than for a penalty or forfeiture under the laws of this state, except where in special cases a different limitation is prescribed by the statutes of this state."

Since the plaintiff's claim for relief in this action is based on the Utah statute (25-1-11 UCA) and since there is no tolling provision of the statute, this cause of action by the plaintiff is barred. It is interesting to note that in the prior two subsections (2) (3), the legislature has deemed it provident to include tolling provisions that defer the running of the statute until a party obtains knowledge of the claimed violation of the statute. There is no tolling provision in subsection (4)!

The primary assets of the trust in this case consist of real estate which was immediately transferred to the

trustee thereby, under Utah statutes, giving constructive notice of the transfer. Any check of the records or review of the financial condition of the applicant would disclose transfers to the trust. In this case the court found, as a matter of fact, that there was no fraudulent intent by Mrs. Anderson.

The case of *Smith v. Edwards,* 81 Utah 244, 17 P.2d 264, is on all fours with the case at hand, for, in that case, as in this case, the court held that there was no fraud shown and that the statute of limitations runs from the time of recording of the conveyances, as all persons are given notice by the recording. The court stated:

> "[12] . . . . From the time of recording these conveyances all persons, including plaintiffs, notice was imparted to them that the conveyances contained the statements above quoted. . . . "
>
> "[20,21] We are of the opinion that the action is barred under the statutes of limitations for the reason that discovery was made, or *the situation was such as to furnish full opportunity for the discovery of fraud, if any existed, more than three years before the bringing of the action.* We are further of the opinion there was no fraud shown. . ." (Emphasis added.)

Since the *Smith v. Edwards* case is identical with the case at hand, it is obvious that the same judgment should apply and the Supreme Court should sustain its

prior order by determining that the statute of limitations has run and the action is barred.

POINT V

UNLESS THE SETTLOR HAS THE "USE" OR CONTROL OF THE PRINCIPAL, SUBSEQUENT CREDITORS HAVE NO RIGHT TO SET ASIDE THE TRUST OR THE CONVEYANCES TO THE TRUST.

The Utah statute (25-1-11) states:

> ". . . All conveyances . . . made in trust for the use of the person making the same shall be void . . ."

In the present case the trust is only incidentally or partially for the use of the grantor and primarily for the preservation of the estate and with instant vesting in the beneficiaries of the trust.

The general rule in cases similar to the instant case is stated in *Stirlin v. Teschemacher,* Missouri 64 SW 2d 647, 91 ALR 121:

> ". . . The general rule is that a subsequent creditor will not be heard to complain about what his debtor did with his property before the accural of the indebtedness. . ."

This general proposition is affirmed in 37 Am Jur 2d, Sec. 28:

> ". . . In order that the transfer may be sustained as to subsequent creditors, it must appear that the settlor has divested himself of all rights of ownership in and control over the property conveyed, reserving only to himself the right to receive the income during life. . ."
> "A statute providing that every conveyance in trust to the use of the transferor shall be void as against creditors does not invalidate a conveyance of a remainder interest . . . created in behalf of another."

Since the Court in this case has held that the trust was created without any fraudulent intent, then the almost universal rule is set forth in 93 ALR 1205-1212 wherein the cases hold that such a trust is valid against subsequent creditors. The case of *Merchantile Trust Company v. Bergdorf and G. Cole* 93 ALR 1205, 167 Md 158, 173 Atlantic 31 held that where a trust was created without fradulent intent and with the net income payable to the settlor for life, cannot be subject to the payment of the settlor's debts subsequently. In 93 ALR at page 1212 editors state:

> "It would seem that such a conveyance is not invalid as to subsequent creditors if the remainder interest is not retained in the settlor but only a power of appointment. . ."

In the instant case the grantor has not even reserved the right of a power of appointment but has actually and definitively vested all of the remainders. The editors further states at page 1213:

". . . actual fraud of the settlor is generally essential to the success of subsequent creditors . . . citing many cases."

CONCLUSION

The settlor in this case, Norma B. Anderson, without any intent to defraud creditors but rather to provide against her own improvidence and protect the rights of her children and grandchildren in the estate that had been created by her deceased husband, created a trust. Mrs. Anderson reserved no right in herself or control over the trust corpus. Further, Mrs. Anderson is not even entitled to all of the income of the trust but only to those funds necessary to maintain her standard of living after taking into consideration other sources of income. This trust is not solely for the use of the grantor. It is not created to defraud creditors. It was established so that Mrs. Anderson, during her lifetime, would not become a dependent on society and her children would have a share in their father's estate. Mrs. Anderson made no representations to the plaintiff. The plaintiff made no effort to check the validity of any representations or even to contact Mrs. Anderson and yet he now seeks to take from her and her children and grandchildren the security of this trust. [redacted] If the court is to sustain the plaintiff in this case, it would make it impossible for a person who is informed that he has rapidly advancing "early senility" or "acute alcoholism"

or other physical or emotional problem to place his assets in such a condition that they would provide for him and against the problems arising from his disease. Obviously, it is not in the public interest to set aside this trust. The implications of such a decision would cause a complete revolution in trust business and in the ability of a free man to provide for himself and against the infirmities of time and disease.

Further, the plaintiff has slept on his rights and the period of limitations allowed for the commencement of any action has expired. This court must overrule prior decisions in order to sustain this late filed action.

In addition, primary assets of this trust consist of real estate and this court has held that the statute does not apply to transfers of real estate in trust. To sustain the plaintiff's cause in this case it must again overrule a prior, well-founded decision which would have many very serious implications, such as the affect on the Trust Deed Act of the State of Utah, the affect on transfers reserving life estates, etc.

The trust that is subject to this action is only incidentally and partially for the benefit of the trustor, and the purposes of this trust are not within those prohibited by the statute. This court has been consistent in following the recommendations as contained in the Restatement of Trusts and the Restatement recommendation in this case is that "such statutes are interpreted as applicable only where the intended trust is for the sole benefit of the settlor".

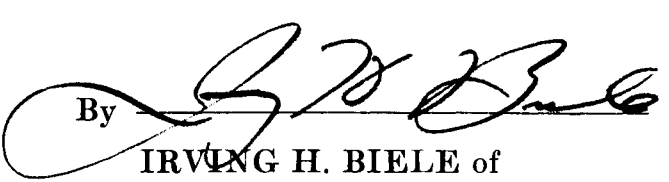
This trust is not for the sole purpose of the settlor, the statute of limitations has expired and the settlor, the widow Mrs. Anderson, would be penalized for her providence if the Supreme Court were to sustain the action of the District Court. Therefore, your appellants respectfully move the Court for its order reversing the decision of the District Court in determining that the Utah statute, Section 25-1-11 is not applicable to the trust created under the circumstances in this case.

DATED this 3rd day of January, 1975.

Respectfully submitted,

By 

PARKER M. NIELSON
Attorney for Appellant,
Norma B. Anderson

By 

IRVING H. BIELE of
BIELE, HASLAM & HATCH
Attorney for Appellant,
Valley Bank and Trust Company